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JUN - 7 1993

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

June 7, 1993

Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

OUR FILE NO.
0159-100

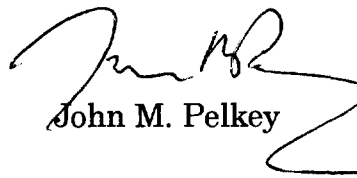
Re: MM Docket No. 93-48
In the Matter of Policies and Rules Concerning
Children's Television Programming

Dear Ms. Searcy:

Transmitted herewith on behalf of Haley, Bader & Potts, are an original and nine copies of its Comments in the above-captioned proceeding.

If there are any questions concerning this matter, please contact this office directly.

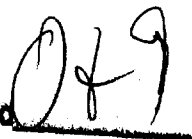
Sincerely,


John M. Pelkey

JMP/lgs

Enclosures (10)

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Before The
Federal Communications Commission

Washington, D.C. 20554

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JUN 7 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In The Matter Of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

TO: The Commission

REPLY COMMENTS OF
HALEY, BADER & POTTS

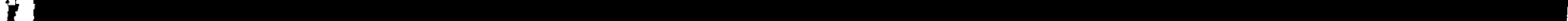




Haley, Bader & Potts ("HB&P")¹ pursuant to the procedures established in § 1.415 of the

[REDACTED]

remember what is not at issue in this proceeding: This is not an inquiry to determine which academician's theory of child development is most in vogue. This is not an inquiry to determine standards for entertainment programming. This is not an inquiry to determine which values are worthy of being taught to young people. This is not even an inquiry to determine the best means of appeasing lawmakers who may or may not be speaking for a majority of their colleagues. Instead, this proceeding is, and can only appropriately be, an inquiry into the best means of meeting the congressional intent behind the Children's Television Act of 1990 ("CTA") -- as that intent as been revealed through sanctioned legislative history, such as the Senate and House reports.

II. The Commission Must Permit Broadcasters to Rely Upon All Programming

discretion to meet its public service obligation in the way it deems best suited.”⁴ The touchstone of any program proffered as being educational or informational is whether it “does in fact serve the educational and informational needs of children.”⁵ This means that a broadcaster must be



not be used by broadcasters because they had not been developed with the assistance of an outside panel of “experts.” This result would be directly contrary to the congressional directive that *all* programming that is educational and informational be recognized by the Commission as being appropriate for use by broadcasters in meeting their CTA obligations.

Similarly flawed is the counterproposal advanced by the American Academy of Pediatrics. This counterproposal would have the Commission automatically exclude from consideration any program that is in any way related to any product that has been sold within two years of the initiation of the program. This obviously is just an indirect way of re-introducing the question of the appropriate definition of program length commercials, despite the fact that the Notice of Inquiry does not propose to examine that question. Moreover, it fails, as did the Children’s Television Workshop proposal, because it would prevent broadcasters from using programming that in fact is educational and informational. It would also prevent program producers from selling program-related products that may, in and of themselves, have an educational value and that certainly could be used to help sustain a program and make it, if not profitable, at least break even.

Rather than relegating the determination as to whether programming is educational and informational to a panel of experts and rather than automatically labeling programming as not being educational or informational because it may have a commercial component, the Commission should instead adopt the approach suggested by HB&P in its Comments.⁷ Under that approach, the Commission would adhere to the procedure it currently uses in other instances in which a violation of the Commission’s rules and policies is alleged. Namely, the broadcaster would provide the requisite children’s educational programming information to the Commission, as is currently required by the Commission’s rules. If the Commission staff questions whether a program on the list was, in fact, educational or informational, it would ask the broadcaster to supply evidence as to the program’s educational or informational content. The broadcaster would then be free to supply a further explanation, supported by expert testimony if the broadcaster so

⁷ HB&P Comments at pp. 19 - 21.

wished, as to why it considered the program in question to be educational or informational. It would only take a relative handful of such requests from the Commission before broadcasters would get the word and not include marginal programs on their lists.

III. The Proposals to Require Broadcasters to Air A Minimum of Seven
Hours of Educational and Informational Programs are Wildly Unrealistic.

Particularly disturbing is the fact that many of those who would impose an unnecessarily cramped definition of "educational and informational" programming upon broadcasters would also impose stringent requirements as to the amount of such programming that must be aired.

Both the Center for Media Education and the American Academy of Pediatrics propose that



even the networks cannot readily sustain. Simply stated, the money for the production of seven hours worth of new educational programming is simply not there.

Moreover, the Commission itself has recognized that the legislative history of the CTA suggests that no minimum criterion should be imposed.¹¹ The only apparent reason for departing from this recognition is the Commission's concern that broadcasters apparently may not be meeting their obligations under the CTA. As HB&P explained, however, that appearance is deceptive and stems from the fact that the Commission's rules had not been in effect long enough, prior to the filing of the programming submissions upon which the Commission relied, to give the Commission a true picture of broadcasters' efforts to comply with the CTA.¹² Simply to ignore

the utility of short-segment programming, the Commission, in the *Memorandum Opinion and Order*¹⁶ on reconsideration, relegated short-segment programming to a complementary role for it therein stated that all broadcasters are required to air standard length children's educational and

standard-length programs, the broadcaster will certainly opt for the latter course if that is the course that will help expedite the renewal application. The processing standard would become a

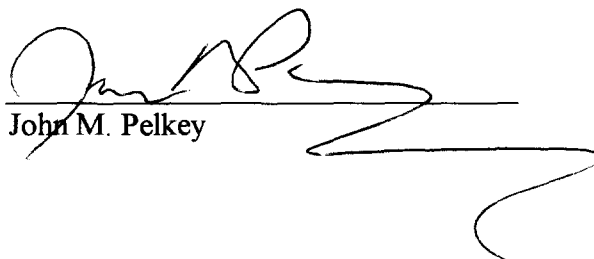
de facto rule all but foreclosing the use of short segment programming as a means of complying

Conclusion

The Commission should refrain from adopting the three policy changes proposed by it in the *Notice of Inquiry*. Any Commission action at this time is premature. In addition, each of the policy changes would deprive broadcasters of the discretion that is a constitutionally-prescribed element of the CTA, and, in so doing, would be contrary to the explicitly-articulated congressional intent. Accordingly, this proceeding should be terminated.

Respectfully submitted,

HALEY, BADER & POTTS

By: 
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